



## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

[DA 21-496; FR ID 25315]

#### Elimination of Termination Dates in the Commission's Retransmission Consent Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, Media Bureau updates the Commission's rules by eliminating termination dates related to retransmission consent to conform to the latest Congressional amendments.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Steven Broecker, [Steven.Broeckaert@fcc.gov](mailto:Steven.Broeckaert@fcc.gov), of the Policy Division, Media Bureau, (202) 418-1075.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Media Bureau's Order, DA 21-496, adopted and released on April 29, 2021. This document will be available via ECFS at <https://www.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

#### Synopsis:

1. In this Order, we update our rules by eliminating the termination dates provided in sections 76.64(l) and 76.65(f) of the Commission's rules relating to retransmission consent to conform to the latest Congressional amendments to section 325(b)(3)(C) of the Communications Act of 1934, as amended (the Act).

2. In 1999, Congress enacted the Satellite Home Viewer Improvement Act

(SHVIA), which adopted standards governing retransmission consent negotiations between broadcasters and multichannel video programming distributors (MVPDs). Specifically, Congress directed the Commission to require television stations to negotiate retransmission consent with MVPDs in good faith and to prohibit broadcasters from entering into exclusive retransmission consent agreements.<sup>1</sup> Originally, section 325(b)(3)(C) of the Act specified that the good faith negotiation and exclusivity provisions would terminate after January 1, 2006. Through successive reauthorizations of these provisions, the termination date in section 325(b)(3)(C) was extended to January 1, 2010, then subsequently to March 1, 2010, March 29, 2010, May 1, 2010, June 1, 2010, January 1, 2015, and finally, to January 1, 2020. The termination date is set forth in sections 76.64(l) and 76.65(f) of the Commission's rules, and was last updated in February 2015 to reflect the January 1, 2020 date.<sup>2</sup>

3. In 2019, section 1002 of the Television Viewer Protection Act of 2019 (TVPA) eliminated the "until January 1, 2020" language from each place that it previously appeared in section 325(b)(3)(C).<sup>3</sup> As a result, the authority for sections 76.64(l) and 76.65(f) now continues indefinitely, yet the text of these specific rule provisions still contains the "until January 1, 2020" termination language. This discrepancy has led to confusion among interested parties as to whether these provisions are still in effect.

4. In this Order, we eliminate the termination dates set forth in sections 76.64(l) and 76.65(f) of the Commission's rules. This change simply conforms to the statutory amendments in the TVPA, which eliminated the termination dates in section 325(b)(3)(C) and thus made the provisions effective indefinitely. Eliminating the outdated termination dates from the Commission's rules conforms with the directive in the TVPA and therefore will alleviate any confusion as to whether the rules remain in effect.

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<sup>1</sup> Although SHVIA imposed the good faith negotiation obligation only on broadcasters, in 2004 Congress made the good faith negotiation obligation reciprocal between broadcasters and MVPDs.

<sup>2</sup> Section 76.64(l) states: "This paragraph shall terminate at midnight on January 1, 2020, provided that if Congress further extends this date, the rules remain in effect until the statutory authorization expires." Section 76.65(f) states: "This section shall terminate at midnight on January 1, 2020, provided that if Congress further extends this date, the rules remain in effect until the statutory authorization expires."

<sup>3</sup> Section 1002 states: "Section 325(b) of the Communications Act of 1934 (47 U.S.C. 325(b)) is amended . . . in paragraph (3)(C), by striking 'until January 1, 2020,' each place it appears."

5. We find that notice and comment procedures are unnecessary under the “good cause” exception of the Administrative Procedure Act (APA) because deleting the termination dates in sections 76.64(l) and 76.65(f) entails no exercise of our administrative discretion. The elimination of the termination dates is already effective as a matter of law under the TVPA. Moreover, the text of our rules already states that if Congress extends the termination date, as it did in the TVPA, the rules remain in effect until the statutory authorization expires. Thus, this rule modification simply updates the Commission’s implementing regulations to conform with the TVPA amendments recently enacted into law.<sup>4</sup> The rule change does not establish additional regulatory obligations or burdens on regulated entities. Consequently, we find notice and comment procedures are unnecessary for this action.

6. Because these rule changes are being adopted without notice and comment, the Regulatory Flexibility Act does not apply.

7. This document does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.

8. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 4(i), 4(j), 303(r), 325 and 614 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 325, and 534, and in section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C § 553(b)(3)(B), this Order **IS ADOPTED**.

9. **IT IS FURTHER ORDERED** that, pursuant to the authority found in sections 4(i), 4(j), 303(r), 325 and 614 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 325, and 534, and in section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C § 553(b)(3)(B), the Commission’s rules **ARE HEREBY AMENDED** as set forth in the final rules below, effective as of thirty (30) days after the date of publication in the Federal Register.

10. **IT IS FURTHER ORDERED** that the Commission shall send a copy of this

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<sup>4</sup> The Commission has found the “good cause” exception to apply in similar circumstances.

Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 76

Cable television; Communications.

FEDERAL COMMUNICATIONS COMMISSION

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

**PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE**

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.64 is amended by revising paragraph (l) to read as follows:

**§ 76.64 Retransmission consent.**

\* \* \* \* \*

(l) Exclusive retransmission consent agreements are prohibited. No television broadcast station shall make or negotiate any agreement with one multichannel video programming distributor for carriage to the exclusion of other multichannel video programming distributors.

\* \* \* \* \*

**§ 76.65 [Amended]**

3. Amend § 76.65 by removing paragraph (f).